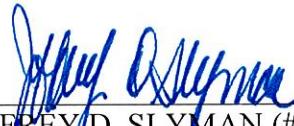


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA	*	CASE NO. 3:18 CR 167
Plaintiff	*	Hon. Walter H. Rice
vs.	*	<u>DEFENDANT'S MOTION FOR</u>
MARIO ALBERTO ARZATE	*	<u>SEVERANCE OF TRIAL</u>
GUTIERREZ, et al.	*	<u>PURSUANT TO RULE 14 OF</u>
Defendants	*	<u>THE FEDERAL RULES OF</u>
		<u>CRIMINAL PROCEDURE</u>

Now comes the Defendant, Mario Alberto Arzate Gutierrez, by and through counsel and hereby moves the Court for an Order granting the severance of the trial so that he will, as to the alleged offenses charged against him, be tried separate and apart from the Co-Defendants named in the indictment. Authority and support for this Motion is set forth herein in the following memorandum.



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MEMORANDUM

Rule 14 of the Federal Rules of Criminal Procedure states in pertinent part “If it appears that a Defendant or the government is prejudiced by the joinder of offenses or of defendants in an indictment or information by such joinder for trial together, the Court may order an election or separate trials of the counts, grant a severance of defendants or provide whatever relief justice requires.”

Mr. Gutierrez requests that he have a separate trial from his other co-defendants. The reason why this is necessary in this particular case is because of undersigned counsel becoming aware of certain allegations through both the discovery and through evidence presented at a potential suppression hearing that will undoubtedly indicate that his co-defendants in the within indictment will maintain mutually antagonistic defenses. Additionally, it is respectfully submitted that the “spill-over” effect of the accumulated evidence against Mr. Gutierrez will prevent the jury herein from rendering an individualized determination of Mr. Gutierrez’s guilt. United States v. Breinig (6th Cir. 1995), 70 F. 3d 850.

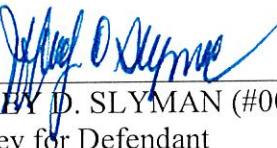
There is no dispute that conspiracies are often far-ranging, loosely-knit ensembles, even when established by direct, uncontroverted proof. This should not mean, however, that the government is given carte blanche authority to link individuals to a single conspiracy because individuals had associations with one or more of others involved, particularly where these associations may have been as innocent as eating at a Mexican restaurant.

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Accordingly, Mr. Gutierrez would respectfully request relief from prejudicial joinder pursuant to Rule 14 and that he be granted a separate trial.

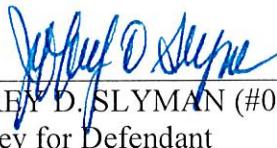
Respectfully submitted,


JEFFREY D. SLYMAN (#0010098)

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was served on Brent G. Tabacchi, United States Attorney's Office, 200 W. Second St., Room 602, Dayton, Ohio, 45402, and all counsel of record by electronic filing this 3rd day of December, 2018.


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